

CHAPTER II - EXEMPTIONS FROM SUBDIVISION REVIEW

Chapter Overview

This chapter addresses the various types of divisions and aggregations of land that are exempted from review as subdivisions in accordance with the Montana Subdivision and Platting Act (“MSPA” or “the Act”), [Title 76, Chapter 3, MCA](#). These are referred to in these regulations as “exemptions.” This chapter also describes the process and criteria for reviewing exemptions.

II-A Authority

The authority in the Act for exemptions from subdivision to be addressed in these regulations is as follows:

- [Title 76, Chapter 3, Part 2, MCA](#) identifies specific exemptions from subdivision review;
- [76-3-201\(5\)](#), and [76-3-207\(4\)](#), [MCA](#) authorize the governing body to examine divisions of land to determine if the exemption is being used properly;
- [76-3-201\(5\)](#) and [76-3-207\(4\)](#), [MCA](#) authorize the governing body to establish fees for review, not to exceed \$200;
- [76-3-504\(1\)\(p\)](#), [MCA](#) requires the local subdivision regulations to establish criteria for determining what divisions qualify as exemptions; and
- [76-3-504\(1\)\(p\)](#), [MCA](#) requires the regulations to include an appeal process to the governing body if the reviewing authority is not the governing body.

II-B Process for Review of Divisions Exempt from Subdivision

1. Review Committee

The Exemption Review Committee appointed by the [\[CITY/COUNTY GOVERNING BODY\]](#) consisting of the [\[TITLES OF APPROPRIATE CITY/COUNTY STAFF\]](#), shall review the application submitted by the landowner to determine if the landowner is eligible for the claimed exemption based upon the criteria set forth in these regulations and in the Act. The Review Committee shall be led by the Subdivision Administrator.

2. Review Process

The sequential steps in the review process are as follows:

- a) The applicant contacts the Subdivision Administrator to assess if the division appears to qualify as an exemption from subdivision review. The applicant should be prepared to identify the legal tract of record proposed for division (refer to Ch. II-F(1) below).
- b) It is the applicant’s responsibility to contact the Department of Environmental Quality (DEQ) reviewer or local sanitarian. Applicants are advised to consult with the appropriate sanitation reviewer prior to finalizing division documents. Separate application forms and materials may be required for approval by DEQ and/or the local sanitarian (refer to Ch. II-E below for more information on sanitation requirements).

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- c) If a survey is required or desired, the applicant shall hire a surveyor to prepare a survey (refer to Ch. II-D below).
- d) If a survey is not required and not desired, the applicant shall prepare the written documents necessary for the division. Private legal review of the documents is recommended.
- e) The applicant shall submit the information electronically to the Subdivision Administrator. Information submitted in other formats may incur additional charges for copying, scanning, or distribution.
- f) The Subdivision Administrator will review the materials to determine if all required information has been submitted. If incomplete, the Subdivision Administrator will notify the applicant in writing of any perceived deficiencies. If complete, the Subdivision Administrator will route the materials to the Exemption Review Committee.
- g) Committee review of the exemption includes a check for compliance with the exemption criteria set forth in these regulations, the Act, the Administrative Rules of Montana (ARMs), and may include review by the Examining Land Surveyor if applicable (see Ch. II-D(2) below).
- h) Once comments from the Exemption Review Committee have been received, the Subdivision Administrator will provide information in writing to the applicant on any corrections and/or additional materials needed. If the Review Committee determines that the proposed use of the exemption is incorrect or an evasion – and therefore denies the application - the Subdivision Administrator shall identify the reasons in writing to the applicant. The Review Committee will review and make a decision on an exemption within 30 working days of receipt of the application. The applicant may appeal the Review Committee's decision to the governing body as identified in Ch. II-C below.
- i) As requested by the Subdivision Administrator and Exemption Review Committee, the applicant will resubmit surveys and documents with corrections.
- j) If corrections are required by the Examining Land Surveyor, the Subdivision Administrator will route the corrected copy of the survey for final review by the Exemption Review Committee.
- k) The Subdivision Administrator will send written notice to the governing body, Clerk and Recorder, and copy the applicant when the exempted division is approved by the Exemption Review Committee for recording. No action is required of the governing body prior to recording.
- l) The applicant will submit the final documents to the [CITY/COUNTY CLERK AND RECORDER](#), including warranty deeds and other information required to be recorded with the division document.

II-C Appeals

Any applicant whose proposed use of an exemption has been denied by the Exemption Review Committee may appeal the decision in writing to the governing body within 10 working days of the written decision. The applicant may submit additional evidence to demonstrate eligibility for the claimed exemption. The governing body shall notify the applicant and Subdivision Administrator of the date and time of the review of the appeal. The governing body's appeal decision shall be provided in writing to the applicant following the review. If the governing body's decision is to authorize use of the exemption, the survey must be recorded with the written authorization of the governing body.

If the applicant proposing to use an exemption chooses not to appeal a denial or if, upon appeal, the governing body affirms that the applicant is not eligible for the claimed exemption, the applicant may submit a subdivision application for the proposed division of land.

II-D Survey Requirements and Review

1. Survey Requirements

Only divisions exempted under [76-3-207, MCA](#) require compliance with the survey requirements of [76-3-401, et. seq. MCA](#). All other exemptions described in Part 2 of the Act do not require a survey, but surveys may be submitted voluntarily.

Any survey, regardless of whether it is required or voluntary, must comply with the Uniform Standards for Survey Monumentation, Certificates of Survey, and Final Subdivision Plats (ARM [24.183.1101](#), [1104](#), and [1107](#)), as applicable.

As provided for in [76-3-401, MCA](#), no survey is required for any exemption, including those in [76-3-207, MCA](#), when the exempted parcel can be described as 1/32 or larger aliquot part of U.S. government section or as a U.S. government lot, unless the parcel is a lot in a platted subdivision. A surveyed U.S. government lot in its entirety does not require a survey; smaller parcels within a government lot do require a survey. Any parcel that was segregated and conveyed individually prior to July 1, 1973 requires no survey (47 Op. Att'y Gen. No. 10).

Any survey submitted as a retracement of an existing parcel shall provide documentation that the parcel exists as a tract of record.

2. Review of Surveys - Compliance with Uniform Standards

The Examining Land Surveyor shall review all surveys for compliance with the Uniform Standards for Survey Monumentation, Certificates of Survey, and Final Subdivision Plats (ARM [24.183.1101](#), [1104](#), and [1107](#)). In the event [\[INSERT THE NAME OF THE CITY OR COUNTY\]](#) has no Examining Land Surveyor, the Subdivision Administrator shall conduct a review for compliance with general requirements such as title of the survey, landowner certifications, etc. but shall not be responsible for aspects which can only be verified by a registered land surveyor, such as the mathematical accuracy of the survey.

3. Identification Codes Included on Surveys

To implement and monitor one or more tracts of record created by exemption, the following identification codes shall be added to the numbering of recorded certificates of survey:

- CO - Court order [\[76-3-201\(1\)\(a\), MCA\]](#)
- ME - Mortgage Exemption [\[76-3-201\(1\)\(b\), MCA\]](#)
- LE - Life Estate [\[76-3-201\(1\)\(e\), MCA\]](#)
- ROW - Right-of-way or utility site [\[76-3-201\(1\)\(h\), MCA\]](#)
- RB - Relocation of Common Boundary [\[76-3-207\(1\)\(a\),\(d\), and \(e\), MCA\]](#)
- FT - Family Transfer [\[76-3-207\(1\)\(b\), MCA\]](#)
- AE - Agricultural Exemption [\[76-3-207\(1\)\(c\), MCA\]](#)
- AL - Aggregation of Lots [\[76-3-207\(2\)\(f\), MCA\]](#)

II-E Other Agency Review of Exempted Divisions

Divisions of land exempted from the Act are still subject to applicable regulations and requirements of other agencies. These requirements may restrict the use of the divided land or preclude the filing of the document creating the division. Laws and regulations that may restrict or preclude development include, but are not limited to, zoning, floodplain regulations, fire codes, and building codes, among others.

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The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of [76-4-122\(2\), MCA](#). The landowner is responsible for obtaining the sanitation approvals necessary for a division of land to be filed with the Clerk and Recorder. All divisions reviewed as exemptions under these regulations are subject to review by DEQ for parcels of less than 20 acres, or to the [COUNTY](#) sanitarian for parcels 20 acres or greater, unless a qualifying exemption under the Sanitation in Subdivisions Act ([Title 76, Chapter 4 et seq., MCA](#)) is deemed applicable and approved by the Exemption Review Committee. The requirement for sanitation review applies to all parcels resulting from a division of a tract of record, not only the parcel created via the exemption under [76-3-201 or 76-3-207 et seq., MCA](#)

II-F Filing Instruments of Transfer & Identifying Existing Tracts of Record

1. Evidence of Existing Tract of Record

The Clerk and Recorder may not file any instrument that purports to transfer title unless the instrument of transfer is accompanied by evidence that the parcel exists as a tract of record and has been surveyed as applicable. As required by [76-3-302, MCA](#), the evidence shall consist of:

- a) An instrument of transfer describing the parcel or tract by reference to a filed certificate of survey or subdivision plat;
- b) Documentation that the parcel is in a location in which the state does not have jurisdiction;
- c) Previously recorded documents verifying the parcel was created before July 1, 1973; or
- d) Documents that, if recorded, would verify the parcel was created before July 1, 1973.

In addition, as established by the Montana Attorney General (47 Op. Att'y Gen. No. 10), a US government lot or an aliquot part of a US government section is not a tract of record simply because its description appears in a deed on file. The Clerk and Recorder may not file any instrument that purports to transfer title to an aliquot part of a US government section or to a government lot unless accompanied by:

- a) Reference to recorded documents that verify the parcel was segregated and individually conveyed prior to July 1, 1973; or
- b) Reference to recorded documents that verify the parcel was segregated and individually conveyed after July 1, 1973, but which was exempted by definition of the word subdivision.

2. Remainders

A remaining parcel of land created through the use of one or more valid statutory exemptions is a tract of record.

3. Review Process for Instruments of Transfer

The applicant submitting the instrument of transfer, including but not limited to warranty deeds or quit claim deeds, shall provide the above referenced documentation of the tract of record to the Subdivision Administrator upon application for use of an exemption.

Once routed to the Exemption Review Committee, the Clerk and Recorder shall examine the filed documents referenced as evidence and may confer with committee members to verify that the instrument of transfer does not create a new parcel subject to review as a subdivision and/or subject to survey requirements.

If it is determined that the instrument of transfer is insufficiently documented to demonstrate no new parcel is created, the Clerk and Recorder shall notify the individual in writing that the instrument shall not be filed until the required documentation is submitted. In addition, the notice will state that if the

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individual cannot provide the documentation and wishes to create a parcel, he/she may contact the Subdivision Administrator for additional information on requirements for divisions of land as exemptions or subdivisions.

II- G General Submittal Requirements

1. Initial Submittal

The applicant shall apply for an exemption by submitting the following materials to the Subdivision Administrator. Except as otherwise noted below, the materials shall be submitted in electronic format (PDF, Word documents or as otherwise specified by the Subdivision Administrator). Information submitted in other formats may incur additional charges for copying, scanning, or distribution.

- a) The applicable review fees.
- b) Evidence that the parcel(s) to be divided or revised exists as a tract or tracts of record including legal description.
- c) Documentation showing that the landowner is eligible for the exemption claimed, such as documentation of tract history, ownership history, etc.
- d) A sketch or survey of the proposed division (refer to Ch. II-F above documenting legal tract of record).
- e) For each parcel created by the division, draft sanitation language that contains an appropriate exemption from sanitation review or planned DEQ/local sanitarian approval.
- f) A statement by the landowner that includes the complete citation of the applicable exemption in [76-3-201 or 76-3-207 et. seq., MCA](#) or as otherwise required for each exemption type; and
- g) Additional documentation meeting the requirements set forth for specific exemptions outlined in Ch. II-H.

2. Final Documents

Once the Subdivision Administrator has notified the applicant that the division meets the exemption criteria and may be recorded, the applicant shall submit the following documents to the Clerk and Recorder:

- a) A Certificate of Subdivision Approval (COSA) from DEQ for each parcel created by the division, to be recorded with the division document; or, comparable approval of the proposed sanitation in subdivisions exemption documentation from the local sanitarian (for parcels 20 acres and greater) to be recorded with the division document; or, the exemption from DEQ rules or local public health ordinance cited on the face of the survey or division document;
- b) The survey or division documents and any supplemental documents (such as warranty deeds) ready to record, with all signatures notarized and the surveyor's seal; and
- c) All applicable filing fees.

II-H Evasion Criteria

1. General Criteria

The Exemption Review Committee, when determining applicability of an exemption, shall consider the evidence related to the proposed use of that exemption in light of all circumstances. Such evidence includes, but is not limited to:

- a) Prior history of the particular tract of record in question;

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- b) Previous use of an exemption to create the tract of record in question;
- c) Proposed configuration of tracts of record once the proposed exemption is completed;
- d) Any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review; and
- e) Intended purpose of the exemption in relation to the claimant's past actions on the property, including any previous attempts to subdivide the tract in question.

2. Specific Criteria

The remainder of this chapter is organized by specific exemption types. Each exemption type is accompanied by information on the applicability of the particular exemption, required documentation for submittal when claiming a specific exemption, and evasion criteria that would apply to that specific exemption.

- a) Divisions of land exempt from review as a subdivision and also exempt from surveying requirements include:
 - Court order
 - Mortgage exemption
 - Severed interest (oil, gas, minerals, or water)
 - Cemetery lots
 - Life estate
 - Lease or rental for farming or agriculture
 - Outside of state jurisdiction
 - Rights-of-way or utility sites
 - Condominiums
 - Airport lands
 - State-owned lands
 - Conveyances prior to July 1, 1974
 - Lands acquired for state highways
- b) Divisions of land exempt from review as a subdivision but subject to surveying requirements and applicable zoning regulations include:
 - Relocating common boundaries outside of platted subdivisions
 - Gift or sale to an immediate family member
 - Agricultural covenant
 - Relocation of common boundaries for five or fewer lots within a subdivision
 - Relocation of common boundaries for a single lot within a platted subdivision and land outside the subdivision
 - Aggregation of parcels
- c) The following format is used to describe criteria for each specific exemption:
 - A description of the exemption, expressed as "This exemption applies to";
 - A description of the required documentation the landowner is required to provide at the initial submittal; and
 - Evasion Criteria: The use of the exemption shall be considered an evasion of the Act if the Exemption Review Committee finds existence of any one of the evasion criteria listed in the following sections or the general criteria listed in Ch. II-H - General Criteria above.

3. Divisions of Land Exempt from Review as a Subdivision and Exempt from Surveying Requirements

a) Court-Ordered Division ([76-3-201\(1\)\(a\), MCA](#)). This exemption applies to:

- Land divisions created by court order; or
- Land divisions that could be created by an order of any court pursuant to the law of eminent domain, Title 70, Chapter 30, and for which there has been no agreement between parties to the sale.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G(1); and
 - B. Copy of the order issued by the court.
 - ii. Evasion Criteria:
 - A. No court order is filed;
 - B. No transfer documents accompany the recording of the division; or
 - C. The governing body has not been allowed to present written comment on the division prior to the court order.

b) Mortgage Security ([76-3-201\(1\)\(b\)](#) and [76-3-201\(3\), MCA](#)). This exemption applies to:

- A division of land of any size to provide security for mortgages, reverse mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- Land that is divided and conveyed to a licensed financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the Act and these regulations; and
- Only the parcel that is created to provide security under this subsection. Any subsequent division of the remaining tract of land, if applicable, is subject to the provisions of the Act and these regulations.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G(1);
 - B. Documentation that the lending institution is a licensed financial or lending institution registered to do business in the State of Montana;
 - C. A signed, notarized statement from the landowner(s) certifying:
 - The landowner will retain title to the entire tract of record until such time as the mortgage exemption parcel may be foreclosed upon;
 - The purpose of the mortgage, lien, or trust indenture is for construction, improvements to the land being divided, or refinancing;
 - The transfer of ownership of the separate mortgage exemption parcel will occur only upon foreclosure; and
 - The landowner will not transfer ownership of the remaining tract unless the mortgage exemption parcel has been foreclosed upon or the landowner has submitted a subdivision application and received final plat approval for the subdivision of the mortgage exemption parcel and the remaining portion.
 - D. A draft of any certificate of survey proposed for the mortgage exemption parcel, or of any other document proposed to be filed with the Clerk and Recorder

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- establishing the mortgage exemption parcel. The survey title shall include the exact wording of the exemption as found in [76-3-201\(1\)\(b\), and \(3\), MCA](#).
- ii. Evasion Criteria:
 - A. Financing is not for construction, improvements to the exempted parcel, or refinancing;
 - B. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
 - C. The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien or trust indenture; or
 - D. The notarized statements and draft certifications required as documentation have not been provided.
 - c) Severed Interest ([76-3-201\(1\)\(c\), MCA](#)). This exemption applies to:
 - Divisions that sever interest in oil, gas, minerals, or water from surface ownership.
 - i. Required Documentation:
 - A. Proposed document to be filed to establish the division or a copy of any survey proposed to be filed; either document must include the exact wording of the exemption in [76-3-201\(1\)\(c\), MCA](#) for subsurface interest and a notarized statement that there is no division of surface ownership or creation of new surface parcels.
 - ii. Evasion Criterion:
 - The division will create divisions of surface ownership into parcels of 160 acres or less.
 - d) Cemetery Lots ([76-3-201\(1\)\(d\), MCA](#)). This exemption applies:
 - To divisions for cemetery lots.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G(1); and
 - B. The document or survey to be filed including a statement limiting the use of the lots to cemetery lots only.
 - ii. Evasion Criterion:
 - A. Lots are not restricted to cemetery lot use only.
 - e) Life Estate ([76-3-201\(1\)\(e\), MCA](#)). This exemption applies to:
 - Divisions for life estates as provided for in [Title 70, Chapter 15](#) of the Montana Code.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G(1); and
 - B. The document to be filed including a statement that the interest is a life estate.
 - ii. Evasion Criteria:
 - A. The life estate does not qualify under provisions of [Title 70, MCA](#); or
 - B. The document that establishes the life estate does not state that the life estate parcel is temporary, and no longer a valid legal parcel after the death of the holder.
 - f) Agricultural Lease ([76-3-201\(1\)\(f\), MCA](#)). This exemption applies to:
 - Parcels that will be rented or leased for farming and agricultural purposes.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G; and

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- B. The documents to be filed shall include a statement limiting the use of the parcel or parcels to agricultural lease or rent only.
- ii. Evasion Criteria:
 - A. The division is created for the purpose of conveyance;
 - B. The use is something other than rent or lease for farming or agricultural purposes;
 - C. A residence or residences exist or are proposed on the parcel to be rented or leased; or
 - D. Commercial uses exist or are proposed on the parcel to be rented or leased.
- g) Federal and Tribal Lands ([76-3-201\(1\)\(g\), MCA](#)). This exemption applies to:
 - Federal or tribal lands or other lands over which the state does not have jurisdiction.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G.
 - ii. Evasion Criterion:
 - A. The land is within the state's jurisdiction.
- h) Rights-of-Way and Utilities ([76-3-201\(1\)\(h\), MCA](#)). This exemption applies to:
 - Rights-of-way as land dedication for city streets and other transportation systems typically requiring land dedication rather than easements; or
 - Sites for public utilities as defined in [76-3-103, MCA](#).
 - i. Required documentation for rights-of-way:
 - A. Documents required per Ch. II-G;
 - B. Landowner approval or proof of eminent domain authority by the entity acquiring the right-of-way; and
 - C. The document filed shall include a notarized statement from the recipient accepting the right-of-way, stating the purpose of the right-of-way, and noticing that under [76-3-201, MCA](#) a subsequent change in the use to residential, commercial, or industrial subjects the division to review.
 - ii. Required documentation for utility sites:
 - A. Documentation to verify the utility meets the definition in [76-3-101, MCA](#);
 - B. Documents required per Ch. II-G;
 - C. Landowner approval or proof of eminent domain authority by the utility; and
 - D. The document filed shall include a notarized statement from the utility accepting the utility site, stating the purpose of the site, and noticing that under [76-3-201, MCA](#) a subsequent change in the use to residential, commercial, or industrial subjects the division to review under the Act.
 - iii. Evasion Criteria:
 - A. The purposes are for other than rights-of-way or utility sites; or
 - B. The entity for which a utility site is created does not meet the definition of a utility per [69-3-101, MCA](#).
- i) Certain Condominiums ([76-3-203, MCA](#)). This exemption applies to:
 - Condominiums, townhomes, or townhouses, as defined in [70-23-102, MCA](#), provided they are constructed on land subdivided in compliance with these regulations or on lots within incorporated cities and towns, and
 - The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and applicable park dedications required by [76-3-621, MCA](#), are complied with; or
 - The condominium, townhome, or townhouse proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.

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- i. Required documentation for previously reviewed divisions in areas without applicable zoning:
 - A. A copy of the filed plat or final approved plan that included the review of the condominiums, townhomes, or townhouses as a subdivision;
 - B. Evidence that the park requirements of [76-3-621, MCA](#) are complied with; and
 - C. A proposed site plan if different from what was approved.
- ii. Required documentation for proposals in a zoned, incorporated municipality or in other areas with applicable zoning regulations:
 - A. A legal description or other evidence that the parcel to be divided exists as a tract of record;
 - B. The proposed site layout; and
 - C. Evidence that the proposal complies with zoning.
- iii. Evasion Criteria:
 - A. The proposed development does not comply with the requirements for unit ownership under [Title 70, Chapter 23, MCA](#), or the definitions for a condominium, townhome or townhouse;
 - B. The proposed development is within an incorporated municipality but does not conform to applicable zoning requirements;
 - C. The proposed development is located outside of an incorporated and zoned municipality and was not previously reviewed and approved as a subdivision;
 - D. The documents establishing the condominium division do not cite the exemption under [76-3-203, MCA](#); or
 - E. The documents establishing the condominium division are not recorded with the “Declaration of Unit Ownership” and all accompanying materials, as approved by the Montana Department of Revenue and as required for declarations per [70-23-301, MCA](#).
- j) Airport Lands ([76-3-205\(1\), MCA](#)). This exemption applies to:
 - A division of land created by lease or rent of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority if such use is for on-site weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G; and
 - B. A map showing current ownership and location of the tract in relation to existing airport lands owned by the city, county, state, or a municipal or regional airport authority.
 - ii. Evasion Criteria:
 - A. Land is not owned by the city, county, state, or a municipal or regional airport authority;
 - B. The proposed use is not for on-site weather or air navigation facilities, or not for the manufacture, maintenance, and storage of aircraft, or air carrier-related activities;
 - C. Land is proposed for conveyance other than lease or rent.
- k) State-Owned Lands ([76-3-205\(2\), MCA](#)). This exemption applies to:
 - State-owned land, except for divisions that create a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G;

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- B. Documentation or a certified statement that there has been no previous division; and
 - C. Documentation that the proposed division is not for sale, rent, or lease for residential purposes.
 - ii. Evasion Criteria:
 - A. The division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes; or
 - B. The land is not owned by the state.
 - l) Conveyances Prior to July 1, 1974 ([76-3-206, MCA](#)). This exemption applies to:
 - Any parcel created via deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.
 - i. Required Documentation:
 - A. No documentation is required to be submitted to the Subdivision Administrator for review as an exemption. Documentation will be required by the Clerk and Recorder to establish the legal existence of the parcel as a tract of record in accordance with Ch. II-F.
 - ii. Evasion Criteria: None
 - m) Lands Acquired for State Highways ([76-3-209, MCA](#)). This exemption applies to:
 - Lands acquired for state highways.
 - i. Required Documentation:
 - A. The instrument of transfer must refer by parcel and project number to state highway plans which have been recorded in compliance with [60-2-209, MCA](#); or
 - B. If the parcels are not shown on Highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of surveys and plats when presented for recording.
 - ii. Evasion Criteria:
 - A. The land is not being acquired for state highways; or
 - B. The land is not describable by reference to recorded state highway plans or by **certificates of survey or plats.**
- ### 4. Divisions or Aggregations of Land Exempt from Subdivision Review, but Subject to Surveying Requirements and Zoning Regulations
- a) Relocation of Common Boundaries (outside of platted subdivisions) ([76-3-207\(1\)\(a\), MCA](#)). This exemption applies to:
 - Relocating common boundary lines between adjoining properties.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G;
 - B. Evidence that the proposed action complies with applicable zoning;
 - C. A survey conforming to the requirements of the ARMs. If no survey is required per [76-3-401, MCA](#) because the area to be conveyed is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself;
 - D. Draft language for certification by the [CITY/COUNTY TREASURER](#) that all taxes and special assessments assessed and levied on the surveyed land have been paid; and

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- E. The landowner's signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record and is forever merged with existing parcels as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the boundary relocation.
 - ii. Evasion Criteria:
 - A. The boundary relocation would create an additional tract of record; or
 - B. Parcels are not outside of platted subdivisions.
 - b) Relocation of Common Boundaries (within a platted subdivision) ([76-3-207\(1\)\(d\), MCA](#)). This exemption applies to:
 - Relocation of common boundaries for five or fewer lots within a platted subdivision.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G;
 - B. Evidence that the proposed action complies with applicable zoning;
 - C. A survey conforming to the requirements of the ARMs, entitled "amended plat of the (insert the name of the subdivision);", and
 - D. The landowners' signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record, that the division does not involve or result in affecting more than five lots since the platting of the subdivision, and is forever merged with existing parcels as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the boundary relocation.
 - ii. Evasion Criteria:
 - A. The boundary relocation would create an additional tract of record, or
 - B. The division involves more than five lots within a platted subdivision.
 - c) Relocation of Common Boundaries (between lots within and outside of platted subdivisions) ([76-3-207\(1\)\(e\), MCA](#)). This exemption applies to:
 - Relocation of a common boundary between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G;
 - B. Evidence that the proposed action complies with applicable zoning;
 - C. A survey conforming to the requirements of the ARMs;
 - D. Draft language for certification by the [CITY/COUNTY TREASURER](#) that all taxes and special assessments assessed and levied on the surveyed land have been paid;
 - E. A certificate of survey that clearly distinguishes between the existing boundary location(s) and the new boundary location(s), conforms to the requirements of the ARMs, and is entitled "amended plat of the (insert the name of the subdivision);", and
 - F. The landowners' signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record, the aggregation is forever merged with existing parcels to form the aggregate parcel(s) as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the aggregation.
 - ii. Evasion Criteria:
 - A. The boundary relocation would create an additional tract of record; or
 - B. The division involves more than one lot within a platted subdivision.

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- d) Gift or Sale to Immediate Family ([76-3-207\(1\)\(b\), MCA](#)). This exemption applies to:
- Parcels located outside of a platted subdivision;
 - A single gift or sale in each [CITY/COUNTY](#) to each member of the landowner's immediate family with the term "immediate family" meaning the spouse, children (by blood or adoption), or parents of the landowner ([76-3-103\(8\), MCA](#)). This exemption does not apply when the land is owned by corporal legal entities such as corporations, companies, partnerships, and trusts.
- i. Required Documentation:
- A. Documents required per Ch. II-G;
 - B. A written statement from the landowners as to the intended purpose of the division, indicating the name and relationship of the person who will receive the land and that this action does not result in more than one gift or sale of a parcel to each member of the landowner's immediate family in the [CITY/COUNTY](#);
 - C. Evidence that the proposed action complies with applicable zoning;
 - D. A survey conforming to the requirements of the ARMs. If no survey is required per [76-3-401, MCA](#) because the area to be conveyed is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself; and
 - E. Draft language for certification by the [CITY/COUNTY TREASURER](#) that all taxes and special assessments assessed and levied on the land have been paid.
- ii. Evasion Criteria:
- A. The parcel to be transferred is within a platted subdivision;
 - B. There has been a previous transfer of land in the [CITY/COUNTY](#) from the landowner to the same individual using the family transfer exemption;
 - C. The recipient does not qualify as an immediate family member; or
 - D. The landowner is a corporal legal entity such as a corporation, company, partnership, or trust.
- e) Divisions of Land Proposed for Agricultural Use Only ([76-3-207\(1\)\(c\), MCA](#)). This exemption applies to:
- Parcels located outside of a platted subdivision when:
 - The landowner agrees to gift, sell, or enter into an agreement to buy/sell a portion thereof to be used exclusively for agricultural purposes; and
 - Parties to the gift, sale, or agreement to buy/sell establish a covenant running with the land, revocable only by mutual consent of the governing body and the property owner, stating that the divided land will be used exclusively for agricultural purposes; and
 - Any change in the use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision except as provided in Ch. II-H(4)(e)(iii) below.
- i. Required Documentation:
- A. Documents required per Ch. II-G;
 - B. A written statement from the landowners as to the intended agricultural purpose, and evidence that the parcel is large enough to accommodate that use;
 - C. Evidence that the proposed action complies with applicable zoning;
 - D. Documents establishing a written covenant that runs with the land, restricting use of the property to agricultural purposes only. The covenant language shall clarify that it is revocable only by mutual consent of the governing body and the property owner and that prior to officially revoking the covenant the parcel must be

- reviewed as a subdivision. The covenant shall be signed by all parties to the gift, sale, or agreement to buy/sell, and the governing body; and
- E. A survey signed by the landowners and conforming to the requirements of the ARMs (the survey must bear a signed and acknowledged recitation of the covenant on the face of the survey). If no survey is required per [76-3-401, MCA](#) because the area to be conveyed is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself.
- ii. Evasion Criteria:
 - A. Any use other than agricultural is proposed; or
 - B. Non-agricultural buildings or structures are present on a tract of record created pursuant to this exemption.
 - iii. The governing body, in its discretion, may revoke the agricultural covenant provided for in 76-3-207(1)(c) and the division may proceed without subdivision review if:
 - A. The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or
 - B. A government or public entity seeks to use the land for public purposes as enumerated in [70-30-102, MCA](#). If the governing body proposes to revoke a covenant for public purposes the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact and a decision based on the records. If the governing body approves the revoking of the covenants, the approval must be recorded with the Clerk and Recorder.
 - C. The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, Chapter 4, MCA.
- f) Aggregation of Lots ([76-3-207\(1\)\(f\), MCA](#)). This exemption applies to:
- The aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot(s) or original un-platted parcel(s) continues to apply to those areas.
 - i. Required Documentation:
 - A. Documents required per Ch. II-G;
 - B. Evidence that the proposed action complies with applicable zoning;
 - C. A survey conforming to the requirements of the ARMs that clearly distinguishes between the existing boundary location(s) and the new boundary location(s), entitled “amended plat of the (insert the name of the subdivision)” when the aggregation affects lots within a subdivision. If no survey is required per [76-3-401, MCA](#) because the area to be conveyed from one property to another is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself;
 - D. Draft language for certification by the [\[CITY/COUNTY TREASURER\]](#) that all taxes and special assessments assessed and levied on the surveyed land have been paid;
 - E. The landowners’ signed and notarized statement on the survey that the aggregation is forever merged with existing parcels to form the aggregate

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- parcel(s) as shown on the survey, and that a restriction or requirement on the original parcel continues to apply to that portion after the aggregation.
- ii. Evasion Criteria:
 - A. The aggregation would create a new tract of record in addition to the aggregated parcel; or
 - B. The aggregation eliminates existing restrictions or requirements.